IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
V.) Criminal No. **03-30060-02-GPM**
)
DAVID D. SMILEY,)
)
Defendant.)

ORDER

PROUD, Magistrate Judge:

Defendant David D. Smiley, represented by counsel, is before the Court pursuant to a petition to revoke his supervised release authorized by Chief United States District Judge G. Patrick Murphy. The Government now seeks to temporarily detain defendant pending his appearance before Chief Judge Murphy on the underlying petition.

Federal Rule of Criminal Procedure 32.1 provides for an initial appearance and preliminary hearing prior to the revocation hearing. Rule 32.1(a)(6) permits release or detention pursuant to 18 U.S.C. § 3143(a) pending those proceedings.

The defendant bears the burden of establishing that he or she will not flee or pose a danger to any other person or the community. **Fed.R.Crim.P. 32.1(a)(6).** 18 U.S.C. § 3143 (a)(2)(A) and (B), in applicable part, provide for detention unless: an attorney for the Government recommends that no sentence of imprisonment be imposed on the person; and the Court finds by clear and convincing evidence that the person is not likely to flee or pose a danger to any other person or the community. **18 U.S.C. §§ 3143(a)(2)(A)(ii) and (B).**

The Government has moved for the revocation of defendant's supervised release, and the Government has made it clear that it will be asking the District Court to imprison the defendant in accordance with 18 U.S.C. § 3583. Smiley executed a written waiver of his right to a preliminary hearing to establish probable cause. In light of the information set forth in the petition for a warrant, the Court finds probable cause to believe that defendant committed the acts alleged and that each of those acts was a violation of the terms of his supervised release. The Government produced evidence that defendant Smiley: pled guilty to retail theft, and has been charged with committing motor vehicle offenses on five separate occasions, possessing Cannabis and drug paraphernalia, battery, and tampering; and he admitted using Marihuana, cocaine, methamphetamine, oxycontin and morphine; left the district without permission; repeatedly failed to report to his probation officer and repeatedly reported in an untimely manner; failed to report his arrests; and failed to make required payments toward assessed financial penalties– all violations of the terms of his supervised release.

Relative to the question of detention, Smiley executed a written waiver of his right to a detention hearing. Moreover, the evidence presented clearly convinces this Court that Smiley is likely to pose a danger to himself and the community.

IT IS THEREFORE ORDERED that David D. Smiley shall be detained pending determination of the pending petition to revoke his supervised release.

IT IS FURTHER ORDERED that: (1) defendant shall be committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable from persons awaiting or serving sentences or being held in custody pending appeal; (2) defendant be afforded reasonable opportunity for private consultation with his counsel; and (3) on order of a court of the United States, or on request of an attorney for the Government, the person in charge of the corrections facility in which defendant is confined deliver defendant to a United States Marshal for the purpose of an appearance in connection with a court proceeding.

IT IS SO ORDERED.

DATED: October 27, 2005

s/ Clifford J. Proud
CLIFFORD J. PROUD
U. S. MAGISTRATE JUDGE